

Message Text

CONFIDENTIAL

PAGE 01 JIDDA 00470 01 OF 02 211658Z

42

ACTION L-02

INFO OCT-01 NEA-09 ISO-00 SP-02 AID-05 EB-07 NSC-05 RSC-01

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NSCE-00 INRE-00 OES-03 SAM-01 PER-01 A-01 CIAE-00

INR-07 NSAE-00 /064 W

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O R 211500Z JAN 75

FM AMEMBASSY JIDDA

TO SECSTATE WASHDC IMMEDIATE 9912

INFO AMEMBASSY CAIRO

AMCONSUL DHAHRAN

AMEMBASSY TEL AVIV

C O N F I D E N T I A L SECTION 1 OF 2 JIDDA 470

E.O. 11652: GDS

TAGS: USSAEC, EAID, SA, US

SUBJECT: JOINT ECONOMIC COMMISSION TECHNICAL COOPERATION
AGREEMENT

REF: A. STATE 12791; B. STATE 10385

BEGIN SUMMARY: THE ECONOMIC COUNSELOR AND U.S. LIAISON
OFFICER TO JOINT COMMISSION MET WITH MINSTATE FOR
FINANCE ABA AL KHAYL FOR TWO HOURS ON JANUARY 18,
PRIOR TO RECEIPT OF REFTEL A AND B. SAG IS PREPARED
TO SIGN A TECHNICAL COOPERATION AGREEMENT WITH WHAT THE
MINISTER SAID ARE ONLY MINOR CHANGES. HE READ FROM
A FOUR-PAGE COMMENTARY, WHICH HE LATER PROVIDED, IN
DESCRIBING THESE CHANGES. HE THEN WENT OVER THE ENTIRE
AGREEMENT, LISTENING TO THE ENGLISH AND FOLLOWING IN
ARABIC WITH HIS COMMENTARY.

THE ESSENTIAL POINTS OF DISAGREEMENT ARE TWO: (A)
THE SAG IS UNWILLING TO GRANT PERSONAL IMMUNITY TO
NON-USG EMPLOYEES OF CONTRACTORS AND IS UNWILLING TO
WAIVE CLAIMS AGAINST PRIVATE CONTRACTORS. (B) SAG
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PAGE 02 JIDDA 00470 01 OF 02 211658Z

BELIEVES THE ARTICLES ON SAG FUNDING OF USG COSTS CAN BE

SIMPLIFIED AND CONDENSED WHILE PROVIDING FULL COVERAGE OF ALL COSTS. IN ADDITION, SAG DESIRES DESIGNATION IN THE AGREEMENT OF THE ACTUAL OFFICES WITHIN EACH GOVERNMENT WHICH WILL CARRY OUT THE AGREEMENT. SAG ALSO REGARDS PARA 6(D) OF THE DRAFT AGREEMENT AS UNNECESSARY, BUT WILL NOT OBJECT TO IT AND DID NOT PRESENT A PROPOSAL TO THE CONTRARY. END SUMMARY

1. THE FOLLOWING SAG PROPOSALS ON THE TECHNICAL COOPERATION AGREEMENT WERE PRESENTED BY MINSTATE FINANCE ABA AL KHAYL. ECON COUNSELOR WAS UNABLE TO PRESENT ANY OF THE POINTS IN REFTEL A BECAUSE IT ARRIVED AFTER MEETING WHICH HAD BEEN RESCHEDULED. IN VIEW OF THE SAUDI PROPOSALS FOR SIMPLIFICATION, EMBASSY JUDGES THAT IS WOULD HARDLY BE WORTHWHILE TO APPROACH THEM WITH ITEMS IN REFTEL A, AT LEAST AT THIS TIME. INDEED, SAUDI PROPOSALS REQUIRE A REASSESSMENT OF THE SUGGESTIONS IN REFTEL A. SAG PROPOSALS ARE TRANSLATED AND PRESENTED IN THEIR ENTIRETY BELOW, ARTICLE BY ARTICLE. EMBASSY COMMENTS ARE APPENDED WHERE NECESSARY, ALONG WITH A RESUME OF THE MINISTER'S EXPLANATION AND ARGUMENTATION.

2. ARTICLES 3 AND 4:

A. "IT IS SUGGESTED THAT THE TWO ARTICLES BE AMALGAMATED IN ONE ARTICLE, AS PER THE FOLLOWING TEXT: ACCORD MAY BE REACHED IN THE CONTEXT OF THIS AGREEMENT THAT THE U.S. GOVERNMENT UNDERTAKES THE PREPARATION OF TECHNICAL OR ECONOMIC STUDIES OF SPECIFIC DEVELOPMENT PROJECTS IF SO REQUESTED BY THE GOVERNMENT OF SAUDI ARABIA. SHOULD SUCH ACCORD BE REACHED, THE GOVERNMENT OF SAUDI ARABIA SHALL DEFRAY ALL COSTS INCURRED BY THE U.S. GOVERNMENT, AND RELEVANT PROJECTS SHALL BE IMPLEMENTED IN ACCORDANCE WITH THIS AGREEMENT."

B. MINISTER ABA AL KHAYL BELIEVES THIS SINGLE ARTICLE INCORPORATES THE ESSENTIALS OF BOTH ARTICLES 3 AND 4 OF THE DRAFT. COUNSELOR SAID THAT WASHINGTON BACKUP ADMINISTRATIVE COSTS WERE OF CONCERN TO USG AND, AS CONFIDENTIAL

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PAGE 03 JIDDA 00470 01 OF 02 211658Z

ASSISTANT SECRETARY PARSKY HAD INFORMED THE MINISTER, THE HOPE WAS TO ESTABLISH A STANDART AMOUNT FOR SUCH SUPPORT COSTS FOR PERSONNEL AND PROJECTS. THE MINISTER REPLIED THAT THE PLEDGE OF THE SAUDI GOVERNMENT TO PAY ALL COSTS CERTAINLY COVERED USG DIRECT AND INDIRECT WASHINGTON COSTS AND REVISED OR ESCALATED COSTS.

C. COMMENT: WE ARE NOT IN A POSITION TO PROVIDE A

LEGAL INTERPRETATION OF THE PROPOSED CHANGE. IF THE SAG OPINION THAT ALL COSTS ARE COVERED IS INDEED CORROBORATED BY THE DEPARTMENT, IT OBVIOUSLY WOULD BE DESIRABLE TO STREAMLINE THE TCA ACCORDING TO THE SAG PROPOSAL. ON THE OTHER HAND, THE SUGGESTION APPEARS TO RUN COUNTER TO THE PROPOSALS IN PARA 1 A, B, AND C OF REFTEL A. EMBASSY AWAITS GUIDANCE ON THIS POINT BUT RECOMMENDS ACCEPTANCE OF A SIMPLIFIED DRAFT: ALL COSTS ARE PLEDGED TO BE PAID INCLUDING COSTS OF PREPARATION, EVEN OF ABORTED PROJECTS. KEY IS ESTABLISHING PROCEDURES IN COMMISSION (E.G., MEMORANDUMS OF UNDERSTANDING ON SPECIFIC PROJECT REQUESTS) WHICH SPELL OUT COSTING METHODS AND AUTHORIZE PAYMENTS FROM THE TRUST FUND. SUCH PROCEDURES WOULD SEEM TO FULLY MEET REQUIREMENTS IN PARA 2 OF REFTEL A.

3. ARTICLE 5

A. "IT IS SUGGESTED THAT THIS ARTICLE BE AMENDED AS FOLLOWS "THE U.S. GOVERNMENT MAY LOCATE SUCH PERSONNEL IN THE SAUDI ARABIAN GOVERNMENT AND WITH ITS CONCURRENCE, WHOSE SERVICES ARE NEEDED FOR PROVIDING ADEQUATE LOCAL ADMINISTRATIVE AND STAFF SUPPORT TO CARRY OUT THE PURPOSES OF THIS AGREEMENT. THE GOVERNMENT OF SAUDI ARABIA WILL DEFRAID ALL COSTS OF PROVIDING SUCH LOCAL AND ADMINISTRATIVE SUPPORT."

B. THIS REVISION STEMS FROM A MISTAKE IN TRANSLATION: THE WORD "LOCATE" IN THE ENGLISH LANGUAGE VERSION OF THE ORIGINAL WAS INTERPRETED TO MEAN "RECRUIT." THE SAUDI CONCERN IS THEIR DESIRE TO TRAIN AND WIDEN THE HORIZON OF SAG PERSONNEL THROUGH ACTUAL EMPLOYMENT ON THE COMMISSION AND THUS THEIR WISH THAT THE COMMISSION

CONFIDENTIAL

PAGE 04 JIDDA 00470 01 OF 02 211658Z

NOT RECRUIT LOCAL HIRE PERSONNEL FROM PRIVATE SOURCES.
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PAGE 01 JIDDA 00470 02 OF 02 211708Z

43

ACTION L-02

INFO OCT-01 NEA-09 ISO-00 SP-02 AID-05 EB-07 NSC-05 RSC-01

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C O N F I D E N T I A L SECTION 2 OF 2 JIDDA 470

C. COMMENT: THE BASIC TRANSLATING ERROR WAS DISCUSSED FULLY WITH THE MINISTER AND CAN EASILY BE RECTIFIED. WE SUGGEST A REPHRASING OF PARA 5 OF THE DRAFT TCA TO READ "ASSIGN" INSTEAD OF "LOCATE." THIS WOULD CLARIFY THE MEANING IN BOTH ENGLISH AND ARABIC. THE ISSUE OF HAVING ALL SAUDI EMPLOYEES OF THE JOINT COMMISSION RECRUITED FROM WITHIN THE GOVERNMENT IS WORTH SERIOUS THOUGHT AND DISCUSSION, BUT HOPEFULLY NEED NOT BE MADE A PART OF THE BASIC AGREEMENT, WHICH COULD HAMPER THE WORK OF THE COMMISSION. IT WOULD OF COURSE BE AN EXCELLENT IDEA TO HAVE THE AUTHORITY TO HIRE FROM THE PRIVATE SECTOR, EVEN IF IT IS NOT NECESSARY AT THE OUTSET. WE DISCUSSED FULLY WITH THE MINISTER THE PROBLEM OF SALARIES. HE SAID IT WOULD BE POSSIBLE TO HAVE THOSE EMPLOYEES WHO ARE RECRUITED FROM THE GOVERNMENT TO SEVER THEIR CONNECTIONS WITH SAG EXCEPT FOR PAYING THEIR PENSION FUNDS, AND TO PERMIT THEM TO HAVE PRESUMABLY HIGHER SALARIES WITH THE COMMISSION. HE SAID THAT THE COMMISSION WOULD ATTRACT, EVEN WITHOUT SUCH SALARIES, THE BEST MEN WITHIN THE GOVERNMENT JUST BY ITS NATURE.

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PAGE 02 JIDDA 00470 02 OF 02 211708Z

4. ARTICLE 7:

A. "IT IS SUGGESTED THAT THIS ARTICLE BE DELETED FOR ITS PURPOSE HAS BEEN INCLUDED IN A PREVIOUS ARTICLE."

B. THE MINISTER SAID THAT THE SAG COMMITMENT TO MEET

ALL DIRECT AND INDIRECT COSTS (IN REVISED SINGLE ARTICLE TO COVER ARTICLES 3 AND 4) RENDERS ARTICLE 7 UNNECESSARY.

C. COMMENT: THIS APPEARS TO RUN COUNTER TO PARA 1, C OF REF A, BUT THE SAG PROPOSAL DOES COVER ALL COSTS AND, BY THE MINISTER'S OWN INTERPRETATION, INCLUDES ANY ESCALATION ON CHANGES IN COSTS THAT MIGHT HAVE TO BE MADE. THE KEY AGAIN SHOULD BE THE DRAFTING OF MEMORANDUMS OF UNDERSTANDING ON INDIVIDUAL PROJECTS WHICH SPECIFY REPLAYMENT PROVIDIONS AND ESTIMATED AND ESCALATION HAZARD CLAUSES IDENTICAL WITH ARTICLE 7 OF THE DRAFT AGREEMENT. EMBASSY RECOMMENDS ACCEPTANCE OF THE PROPOSAL WITH THE PROVISION THAT A LETTER OF INTERPRETATION BE HANDED TO THE SAG FROM THE USG AT THE TIME OF SIGNATURE. SAUDIS ARE CERTAINLY AWARE THAT SUCH OVER-RUNS ARE PROBABLY INEVITABLE IN TODAY'S WORLD, GIVEN THE NATURE OF THE PROJECTS.

5. ARTICLE 9:

A. "IT IS SUGGESTED THAT THIS ARTICLE BE AMENDED AS FOLLOWS: 'EMPLOYEES OF THE UNITED STATES GOVERNMENT WHO ARE ASSIGNED TO PERFORM SERVICES UNDER THIS AGREEMENT SHALL BE ENTITLED TO THE PRIVILEGES AND IMMUNITIES ACCORDED TO PERSONNEL OF THE EMBASSY OF THE UNITED STATES OF AMERICA IN THE KINGDOM. SUCH PRIVILEGES SHALL NOT EXTEND TO OTHER EMPLOYEES OF ESTABLISHMENTS OR CORPORATIONS HIRED BY THE U.S. GOVERNMENT UNDER THIS AGREEMENT.'"

B. THE SAG DOES NOT WISH TO OFFER IMMUNITIES TO CONTRACTOR EMPLOYEES. COUNSELOR POINTED OUT THAT ALMOST EQUIVALENT PRIVILEGES AND IMMUNITIES AS THOSE SPECIFIED ARE WRITTEN INTO OTHER SAG CONTRACTS WITH U.S. AGENCIES. WHILE WHAT WE ARE SPECIFYING HERE WOULD BE AN ENLARGEMENT, CONFIDENTIAL

CONFIDENTIAL

PAGE 03 JIDDA 00470 02 OF 02 211708Z

THE ADAMANCY WITH WHICH THE MINISTER DISCUSSED THE SUBJECT INDICATES SAG IS VERY UNWILLING TO MOVE ON IT. THE SIZE OF THE PROGRAM AND POSSIBLE NUMBER OF CONTRACTOR EMPLOYEES ARE OF PARTICULAR CONCERN TO THE SAG.

C. COMMENT: EMBASSY AWAITS WASHINGTON ARGUMENTATION ON THIS BUT RECOMMENDS ACCEPTANCE OF THE ARTICLE.

6. ARTICLE 11

A. "IT IS SUGGESTED THAT THIS ARTICLE BE AMENDED AS FOLLOWS: 'THE GOVERNMENT OF SAUDI ARABIA AGREES TO HOLD THE UNITED STATES GOVERNMENT HARMLESS AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AS A RESULT OF THE TECHNICAL

SERVICES FURNISHED UNDER THIS AGREEMENT. SUCH RELEASE SHALL NOT INCLUDE ESTABLISHMENTS AND PRIVATE COMPANIES EMPLOYED FOR THE IMPLEMENTATION OF THIS AGREEMENT."

B. THE SAG HOLDS THAT, ALTHOUGH EXEMPTION OF THE USG IS APPROPRIATE, PRIVATE PARTIES WORKING UNDER PROJECT CONTRACTS MUST CONTINUE TO HAVE THE RESPONSIBILITIES OF AND BE COVERED BY THE USUAL CLAIMS PROCEDURES. THIS ATTITUDE STEMS FROM SAUDI SENSITIVITIES DUE TO PAST PERFORMANCE OF CERTAIN FIRMS IN THE KINGDOM. WE AGREED TO REFER THE ISSUED TO THE DEPARTMENT.

C. COMMENT: EMBASSY FEELS THAT PRIVATE CONTRACTORS SHOULD BE HELD RESPONSIBLE. AGAIN, A LETTER OF INTERPRETATION COULD INCLUDE THE HOPE THAT DISPUTES UNDER THE AGREEMENT WOULD BE REFERRED TO A JOINT COMMITTEE.

7. ARTICLE 13

A. "IT IS SUGGESTED THAT AN ARTICLE BE ADDED DESIGNATING THE ADMINISTRATIVE ENTITIES WHICH SHALL REPRESENT BOTH GOVERNMENTS IN THE EXECUTION OF THIS AGREEMENT. WITH REGARD TO THE SAUDI ARABIAN GOVERNMENT, IT HAS BEEN DECIDED THAT IT SHALL BE REPRESENTED BY THE COORDINATION OFFICE OF THE JOINT ECONOMIC COMMISSION. THEREFORE THE AMERICAN ENTITY MUST BE DEFINED, AND A NEW ARTICLE

CONFIDENTIAL

PAGE 04 JIDDA 00470 02 OF 02 211708Z

ADDED."

B. THE MINISTER SAID THAT THE USG COULD DESIGNATE THE EMBASSY OR AN OFFICE IN THE EMBASSY, AS IT MIGHT WISH OR DESIRE. THE EMBASSY RECOMMENDS THE FOLLOWING WORDING:

ARTICLE 13

THE GOVERNMENT OF SAUDI ARABIA DESIGNATES THE COORDINATION OFFICE OF THE U.S. SAUDI JOINT ECONOMIC COMMISSION TO EXECUTE ITS PART OF THIS AGREEMENT. THE GOVERNMENT OF THE UNITED STATES DESIGNATES THE U.S. EMBASSY TO EXECUTE ITS PART OF THE AGREEMENT.

C. COMMENT: IT IS OBVIOUS THAT THE MINISTER WISHES TO RETAIN FULL CONTROL OF THE SAUDI ACTION AGENCY BY DESIGNATING IT IN THE AGREEMENT.

8. ARTICLE 6 (D)

THE MINISTER ALSO EXPRESSED THE SAG VIEW THAT ARTICLE

6 (D) REGARDING INVESTMENT OF TRUST FUND MONIES IS UN-
NECESSARY. NEVERTHELESS, THE SAG DOES NOT OBJECT TO
THE ARTICLE AND DID NOT PRESENT A WRITTEN PROPOSAL.
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